MACKAY BAR CORP.

IBLA 82-1224 Decided December 13, 1982

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring part of a mining claim null and void ab initio.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Powersite Lands -- Mining Claims: Withdrawn Land -- Powersite Lands -- Withdrawals and Reservations: Powersites

   A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

2. Administrative Procedure: Hearings -- Mining Claims: Hearings -- Rules of Practice: Appeals: Hearings -- Rules of Practice: Hearings

   In proceedings before the Department to determine the validity of a mining claim notice and an opportunity for a hearing are required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

APPEARANCES: E. Don Copple, Esq., Boise, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Mackay Bar Corporation has appealed from the July 7, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring part of the Salmon placer mining claim null and void ab initio. I MC-36136. The copy of the location notice for the claim filed by appellant indicates that the claim was located on April 14, 1933, at the junction of the Salmon River and its south fork. The claim is situated in secs. 5 and 6, T. 23 N., R. 8 E., and sec. 32, T. 24 N., R. 8 E., Boise meridian. The decision below

noted the portion of the claim in sec. 32 which lies within one-fourth mile of the Salmon River was withdrawn by Secretarial order dated September 29, 1922, under Power Site Classification No. 50.

[1] The decision below correctly applies the law. The powersite classification was made pursuant to a statutory provision that reserves such land "from entry, location, or other disposal * * *." 16 U.S.C. § 818 (1976). A mining claim located prior to August 11, 1955, on lands withdrawn for a powersite is null and void ab initio. 1/

Appellant objects that BLM's decision "was entered without notice to appellant * * *," without giving appellant the opportunity to respond or present evidence and without due process of law. Appellant believes that the Salmon placer mining claim is valid and contends that it should be afforded an opportunity to consider the Government's contentions and respond thereto. Appellant has further requested that the case be referred to an Administrative Law Judge for a hearing pursuant to 43 CFR 4.415.

[2] These contentions state no basis for reversing the decision below. We have answered appellant's procedural objection many times before. In Dorothy Smith, 44 IBLA 25, 29 (1979), we held:

> [E]ven if due process were construed to require the Department of the Interior to afford appellants some form of hearing prior to declaring their mineral location null and void, the requirement is satisfied by appellants' appeal to this Board. It is well established that where there are no disputed questions of fact and the validity of a claim turns on the legal effect to be given facts of record which show the status of the land when the claim is located, no hearing before an Administrative Law Judge is required. United States v. Consolidated Mines & Smelting Co., Ltd., 455 F. 2d 432 at 453 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966), aff'g The Dredge Corp., 64 I.D. 368 (1957); 65 I.D. 336 (1958); H. B. Webb, [34 IBLA 362 (1978)]; Roy R. Cummins, 26 IBLA 223 (1976); David Loring Gamble, 26 IBLA 249 (1976); Vearl Martin, 18 IBLA 234 (1974).

See also John J. Schnabel, 50 IBLA 201 (1980).

The decision itself gave appellant notice why its claim was being declared null and void in part. The right of appeal under 43 CFR 4.410 provided appellant with an opportunity to respond to BLM's decision before it becomes effective. Indeed, appellant was obligated under 43 CFR 4.412 to file a complete statement of reasons why it believes the decision below to be incorrect within 30 days after filing the appeal. Thus, appellant has been given notice of the adverse decision and an opportunity to respond. Other than a bare assertion of its belief that its claim is valid, appellant has pointed to no error of fact or law in BLM's decision.

1/ The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the act. George L. Hawkins, 66 IBLA 390 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and appellant's request for a hearing is denied.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Melvin G. Mirkin
Administrative Judge
Alternate Member